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Lead Counsel for Court-Appointed Lead Plaintiff and the Class

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**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA**

IN RE TEZOS SECURITIES LITIGATION

This document relates to:

ALL ACTIONS.

Master File No. 17-cv-06779-RS

CLASS ACTION

**LEAD PLAINTIFF'S NOTICE OF
MOTION AND MOTION FOR LEAVE TO
FILE MOTION FOR
RECONSIDERATION**

Date: December 6, 2018
Time: 1:30 p.m.
Crtrm: 3
Judge: Hon. Richard Seeborg

NOTICE OF MOTION

PLEASE TAKE NOTICE THAT, on December 6, 2018, at 1:30 p.m., before the Honorable Richard Seeborg of the United States District Court, Northern District of California, located at Golden Gate Avenue, San Francisco, California 94102, Lead Plaintiff Arman Anvari (“Lead Plaintiff”) will move before this court pursuant to Local Rule 7-9 for an order granting Lead Plaintiff leave to file a motion for reconsideration of this Court’s September 6, 2018 Case Management Scheduling Order (Dkt. No. 165). This motion is based upon this Notice of Motion and Motion, the accompanying Memorandum of Law, the Proposed Order filed herewith, all pleadings and papers filed herein, the arguments made regarding this matter, and any other information properly before the Court.

Respectfully Submitted,

Date: November 1, 2018

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MEMORANDUM OF LAW

Lead Plaintiff Arman Anvari (“Lead Plaintiff”) respectfully submits this memorandum of law in support of his Motion for Leave to File a Motion for Reconsideration, pursuant to Local Rule 7-9. Under Local Rule 7-9(b), a party may seek such relief if, “at the time of the motion for leave, a material difference in fact or law exists from that which was presented to the Court before entry of the interlocutory order for which reconsideration is sought.” Local Rule 7-9(b)(1). “The party also must show that in the exercise of reasonable diligence the party applying for reconsideration did not know such fact or law at the time of the interlocutory order” *Id.*

Here, Lead Plaintiff seeks leave to file a motion for reconsideration of the Court’s September 6, 2018 Case Management Scheduling Order (“September 6 Order”), in which the Court granted Defendants’ request for an additional two-hour deposition as to the issue of Lead Plaintiff’s knowledge (or lack thereof) of the purported “Contribution Terms,” and the issue of *forum non conveniens* generally. In obtaining the September 6 Order, Defendants failed to apprise the Court of an email authored by Defendant Tezos Stiftung (the “Tezos Foundation”), which expressly instructed investors to “**always refer exclusively to the Tezos website at <https://tezos.com>**” and that “**No other websites are authorized to provide information on Tezos or accept contributions to the Tezos fundraiser.**” Ta Decl.¹ Ex. A. Because the Contribution Terms were never posted on the tezos.com contributions website, the Tezos Foundation’s own instructions establish that the Contribution Terms were not legally binding. Accordingly, based on this email, which was only recently received by Lead Counsel, the Court should either reverse its decision to permit the additional deposition, or modify the September 6 Order to afford Lead Plaintiff a fair opportunity to present to the Court a complete and accurate picture of the facts.

I. BACKGROUND

On April 3, 2018, Lead Plaintiff filed his Consolidated Complaint in this action. On May 15, 2018, the Tezos Foundation and Defendants Dynamic Ledger Solutions, Inc. (“DLS”), and Kathleen

¹ “Ta Decl.” refers to the Declaration of Hung G. Ta, Esq. in support of Motion for Leave to File Motion for Reconsideration, dated November 1, 2018.

1 and Arthur Breitman (collectively with DLS, the “DLS Defendants”) moved to dismiss based on,
2 among other grounds, *forum non conveniens* and the inapplicability of the U.S. securities laws under
3 *Morrison v. Nat’l Austl. Bank Ltd.*, 561 U.S. 247 (2010). Defendants based these arguments on the
4 Contribution Terms, a document that was posted *not* on the investment contributions website itself
5 (www.tezos.com and crowdfund.tezos.com), but on a totally separate and distinct website –
6 www.tezos.ch. Defendants repeatedly asserted that these Contribution Terms were binding on
7 investors, and dispositive of this lawsuit. *See, e.g.*, Tezos Foundation Motion to Dismiss Br. (Dkt.
8 No. 119) at 5-6, 16; DLS Defendants’ Motion to Dismiss Br. (Dkt. No. 123) at 6-8. At the oral
9 argument hearing on August 1, 2018, Defendants repeated these arguments.

10 On September 6, 2018, the Court conducted an initial Case Management Conference
11 (“CMC”). In advance of the CMC, and again at the CMC, Defendants argued that discovery should
12 be bifurcated, specifically, that “discovery should commence with the threshold issue of Lead
13 Plaintiff’s knowledge of the Contribution Terms prior to his contribution.” Joint Case Management
14 Statement (Dkt. No. 162) at 12. Defendants suggested that Lead Plaintiff had something to hide,
15 asserting that “Lead Plaintiff has declined every opportunity, from the filing of the complaint to the
16 filing of this statement, to explain whether he reviewed the Contribution Terms prior to making his
17 contribution.” *Id.* at 12-13. (In response to Defendants’ Requests for Admission, Lead Plaintiff has
18 now submitted a sworn response denying that he accessed the Contribution Terms before he made his
19 investment, and that his computer files indicated that he downloaded the Contribution Terms only on
20 April 17, 2018, after this consolidated lawsuit was filed.) Although the Court stated at the CMC its
21 view that Defendants were unlikely to prevail on their *forum non conveniens* argument, the Court
22 granted Defendants’ request for a two-hour deposition as to the issue of Lead Plaintiff’s knowledge
23 of the Contribution Terms. September 6, Order (Dkt. No. 165) at 1 (“Defendants may take an
24 additional deposition of Lead Plaintiff Arman Anvari focused solely on the *forum non conveniens*
25 issue. This additional deposition shall be limited to two hours and will not count towards Defendants’
26 deposition limits.”).

As it turns out, it was Defendants who were not forthcoming with the Court. On October 26, 2018, Lead Counsel received an email that the Tezos Foundation sent to investors on June 15, 2017 (“Tezos Foundation Email”), approximately two weeks before the commencement of the Tezos initial coin offering (“Tezos ICO”). Ta Decl. ¶ 2, Ex. A. In the email, the Tezos Foundation announced to investors that “the official start of the Tezos fundraiser [was] Saturday, July 1, 2017 at 6 am UTC.” Importantly, the Tezos Foundation expressly instructed investors *to not refer to any website other than the contributions website at tezos.com*. Specifically, the Tezos Foundation instructed investors that, “For technical information on how to participate in the Tezos fundraiser, **please always refer exclusively to the Tezos website at <https://tezos.com>**” (emphasis in original) and that, “If you would like to contribute, only do so through our own website <https://tezos.com> once the fundraiser opens, or through <https://www.bitcoinsuisse.ch/tezos> starting today. **No other websites are authorized to provide information on Tezos or accept contributions to the Tezos fundraiser.**” *Id.* (emphasis in original). It is undisputed that the Contributions Terms resided on tezos.ch, and not on the Tezos contributions website (tezos.com) or on the Bitcoin Suisse contributions website (bitcoinsuisse.ch). Accordingly, contrary to the position adopted by Defendants in their motions to dismiss and at the CMC, the Tezos Foundation’s own statements conclusively establish that the Contribution Terms are not and never were legally binding on anyone.

On October 29, 2018, Lead Counsel brought the Tezos Foundation Email to the attention of Defendants’ counsel, and asked whether, in light of the document and Lead Plaintiff’s discovery responses evidencing lack of knowledge of the Contribution Terms, Defendants intended to proceed with the two-hour deposition and discovery related to Lead Plaintiff’s awareness of the Contribution Terms. Lead Plaintiff also asked Defendants’ counsel to advise whether they were aware of this document before they made their various arguments to the Court for dismissal based on the Contribution Terms and for an additional two-hour deposition. Defendants rejected Lead Plaintiff’s request, and insisted on taking Lead Plaintiff’s deposition. Defendants’ counsel also refused to disclose any information relating to the timing of their knowledge of the Tezos Foundation Email.

1 **II. THE COURT SHOULD RECONSIDER AND/OR MODIFY THE**
 2 **SEPTEMBER 6 ORDER**

3 Apart from raising questions about Defendants’ candor with the Court (for example, without
 4 the benefit of the Tezos Foundation Email, the Court has previously characterized Defendants’ *forum*
 5 *non conveniens* argument as “strong” (Dkt. No. 148 at 11) and the issue as one that “needs to be
 6 resolved early” (8/1/18 Transcript at 71)), the Tezos Foundation Email constitutes a “material
 7 difference in fact” such that the Court should reconsider and/or modify the September 6 Order.

8 First, the Tezos Foundation Email makes clear that Defendants’ strategy, in seeking an early
 9 2-hour deposition of Lead Plaintiff, was to obtain a quick ruling on the issue of *forum non conveniens*,
 10 presumably before Lead Plaintiff had a fair opportunity to conduct discovery relating to the validity
 11 of the Contribution Terms. Consistent with this strategy, and despite repeated requests from Lead
 12 Counsel, Defendants have so far failed to produce *any* documents in response to Lead Plaintiff’s
 13 document requests (served more than two-and-a-half months ago on August 16, 2018), or to even
 14 advise when they intend to start producing documents. In light of Defendants’ lack of candor, and in
 15 order to prevent abuse and any prejudice to Lead Plaintiff, the Court should disallow the additional
 16 2-hour deposition of Lead Plaintiff. The Court should instead require that, to the extent Defendants
 17 seek to depose Lead Plaintiff, they do so under the normal limitations of the Federal Rules of Civil
 18 Procedure and in the normal course of this litigation. Defendants can then make any motion they
 19 wish to make based on *forum non conveniens*, if they believe such a motion would not be frivolous.

20 Second, if the Court is not inclined to disallow the additional 2-hour deposition of Lead
 21 Plaintiff, Lead Plaintiff requests that he be permitted reciprocal discovery rights – to take an additional
 22 Rule 30(b)(6) deposition of the Tezos Foundation and an additional Rule 30(b)(6) deposition of DLS,
 23 limited to the issue of the Contribution Terms and *forum non conveniens*. See *Cheng v. Boeing Co.*,
 24 708 F.2d 1406, 1412 (9th Cir. 1983) (“[A] plaintiff should be able to conduct directed discovery on
 25 the issues raised by the [*forum non conveniens*] motion[.]”) (citation omitted); *Vivendi, S.A. v. T-*
 26 *Mobile USA, Inc.*, No. 06-cv-1524, 2007 WL 1168819, at *2 (W.D. Wash. Apr. 18, 2007) (allowing
 27 non-movant to “pursue discovery that is narrowly tailored to the question of *forum non conveniens*”).
 28 Like Defendants’ 2-hour deposition of Lead Plaintiff, Lead Plaintiff’s two Rule 30(b)(6) depositions

would not count towards Lead Plaintiff's deposition limits. In light of the Tezos Foundation Email, Lead Plaintiff should be afforded a fair opportunity to obtain testimony from the Defendants' corporate representatives with respect to the factual issues of the Contribution Terms, their location on the separate website www.tezos.ch and the reasons therefor, and any communications by the Tezos Foundation to investors to rely or not to rely on these Contribution Terms and these separate websites. If the Court remains inclined to permit Defendants to renew their motions to dismiss based on *forum non conveniens* even in light of the Tezos Foundation Email, Lead Plaintiff should be afforded an opportunity to fully develop an opposing record.

Finally, given Defendants' failure so far to produce any documents, the Court should require Defendants to certify that they have produced to Lead Plaintiff all documents relating to the Contribution Terms and *forum non conveniens* before they renew their motion to dismiss. This would ensure that Defendants do not file any motions to dismiss before Lead Plaintiff has had an opportunity to develop the factual record.

CONCLUSION

For the reasons stated above, Plaintiff respectfully requests that the Court grant Lead Plaintiff leave to file a motion for reconsideration of the September 6 Order.

Date: November 1, 2018

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